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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
LIN 07 017 50519

Office: NEBRASKA SERVICE CENTER

Date: DEC 17 2007

IN RE: Petitioner:
Beneficiary:

[REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an executive search and placement firm. It seeks to employ the beneficiary permanently in the United States as a knowledge manager pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, an ETA Form 9089 Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. The director determined that the job offered did not require a member of the professions and that the petitioner had not demonstrated that the beneficiary has the necessary experience.

On appeal, counsel only addressed whether or not the position requires a member of the professions. Counsel indicated that he would submit a brief and/or additional evidence directly to this office within 30 days. Counsel dated the appeal November 27, 2006. As of November 1, 2007, this office had received nothing further. Thus, on that date, we contacted counsel by facsimile, advising that we had received no additional materials, inquiring as to whether anything had been submitted and requesting a copy of any additional materials submitted. The facsimile advised that failure to respond to our inquiry within five business days may result in the summary dismissal of the appeal. As of this date, this office has received no response. While we withdraw the director's conclusion that the job offered did not require a member of the professions, we uphold the director's conclusion that the petitioner has not submitted the required initial evidence to demonstrate that the beneficiary has the necessary experience.

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(4) provides the following:

(i) *General.* Every petition under this classification must be accompanied by an individual labor certification from the Department of Labor, by an application for Schedule A designation (if applicable), or by documentation to establish that the alien qualifies for one of the shortage occupations in the Department of Labor's Labor Market Information Pilot Program. To apply for Schedule A designation or to establish that the alien's occupation is within the Labor Market Information Program, a fully executed uncertified Form ETA-750 in duplicate must accompany the petition. **The job offer portion of the individual labor certification, Schedule A application, or Pilot Program application must demonstrate that the job requires a professional holding an advanced degree or the equivalent or an alien of exceptional ability.**

(Bold emphasis added.)

The key to determining the job qualifications is found on Form ETA-750 Part A. This section of the application for alien labor certification, "Offer of Employment," describes the terms and conditions of the job offered. It is important that the ETA-750 be read as a whole. The instructions for the Form ETA 750A, item 14, provide:

Minimum Education, Training, and Experience Required to Perform the Job Duties. Do not duplicate the time requirements. For example, time required in training should not also be listed in education or experience. Indicate whether months or years are required. Do not include restrictive requirements which are not actual business necessities for performance on the job and which would limit consideration of otherwise qualified U.S. workers.

Regarding the minimum level of education and experience required for the proffered position in this matter, Part A of the labor certification reflects the following requirements:

Block 14:

Education: "B.A. or B.S."

Major Field of Study: "Any Field"

Experience: 5 years in job offered or related occupation.

Block 15: Blank

The "job offered" is "senior consultant" and the "related occupation" is "Systems Consultant in the Capital Markets Industry." As defined at Section 101(a)(32) of the act, profession "shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or

secondary schools, colleges, academies, or seminaries.” The regulation at 8 C.F.R. § 204.5(k)(2), in pertinent part, defines “profession” as follows:

[O]ne of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.

The director acknowledged these definitions, but then relied on *Matter of Shin*, 11 I&N Dec. 686 (Dist. Dir. 1966) and *Matter of Palanky*, 12 I&N Dec. 66 (Regl. Commr. 1966), for the proposition that the degree must be related to the field. We note that in *Matter of Shin*, 11 I&N Dec. at 688, the District Director did state that a degree in and of itself was insufficient; rather, the “knowledge acquired must also be of [a] nature that is a realistic prerequisite to entry into the particular field of endeavor.” The following discussion, however, was limited to the level of education required, not the major field of study. Moreover, *Matter of Palanky*, 12 I&N Dec. at 68, addressed an occupation that did not require a full baccalaureate. Most significantly, these cases predate the regulation at 8 C.F.R. § 204.5(k)(2). Therefore, we must defer to the definition in that regulation, which states only that a profession must require a baccalaureate for entry into the occupation. As the job in this matter requires a baccalaureate, we find that it does require a member of the professions. Thus, we withdraw the director’s finding that the job does not require a member of the professions.

Nevertheless, we uphold the director’s conclusion that the petitioner has not demonstrated that the beneficiary meets the job requirements listed on the Form ETA 750A.

The regulation at 8 C.F.R. § 204.5(g)(1) provides, in pertinent part:

Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received. If such evidence is unavailable, other documentation relating to the alien's experience or training will be considered.

On the Form ETA 750B, signed by the beneficiary, the beneficiary indicated that he had a four-year Bachelor of Technology from the Indian Institute of Technology and a two-year M.B.A. from the Indian Institute of Management. The beneficiary also indicated that he had worked as a software engineer for Tata Information Systems Limited, a telecommunications company, from June 1995 through May 1996, as a consultant for Deloitte and Touche Consulting Group from June 1998 through April 2000, as a senior consultant for Proxicom, Inc. from May 2000 through August 2000 and as a senior consultant for the petitioner from September 2000 through at least November 2, 2001, the date the Form ETA 750 was filed.

In support of the petition, the petitioner submitted the beneficiary’s Bachelor of Technology and his Post Graduate Diploma in Management. Mary Burke, Associate Director of Evaluations for the Foundation for International Services, Inc., evaluates the beneficiary’s baccalaureate as equivalent to a U.S. baccalaureate and his Post Graduate Diploma as equivalent to a U.S. Master’s degree in

management. As noted by the director, the petitioner did not submit any evidence of the beneficiary's claimed experience. Specifically, on page three of the decision, the director stated that the record "does not contain any documentary evidence that the beneficiary has the required 5 years experience in the job offered or related field. Without this required evidence [Citizenship and Immigration Services] is unable to determine whether the beneficiary has met the minimum requirements of the Form ETA-750 and is thereby qualified for the job opportunity."

Counsel does not address this issue on appeal. We concur with the director that this deficiency precludes approval of the petition.

Moreover, the priority date in this matter is November 2, 2001, the date the Form ETA 750 was filed. See 8 C.F.R. § 204.5(d). Thus, the petitioner must establish that the beneficiary had the necessary experience as of that date. See 8 C.F.R. § 103.2(b)(12); *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Regl. Commr. 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). On the Form ETA 750B, the beneficiary does not list any consulting experience within the capital markets industry until June 1998, less than five years before the priority date in this matter.¹

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

¹ While the beneficiary claims to have an MBA, the Form ETA 750A does not suggest that education can be substituted for the required experience. Moreover, while Ms. Burke equates the beneficiary's postgraduate diploma to a U.S. Master's degree, that opinion is not determinative. Specifically, Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. See *id.* at 795. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; See also *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

We have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officer (AACRAO). AACRAO, according to its website, www.aacrao.org, is "a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent approximately 2,500 institutions in more than 30 countries." Its mission "is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services." According to the registration page for EDGE, <http://aacraoedge.aacrao.org>, EDGE is "a web-based resource for the evaluation of foreign educational credentials."

While EDGE asserts that Post Graduate Diplomas typically follow three-year baccalaureate degrees, it only equates the actual Post Graduate Diploma to a U.S. baccalaureate degree and does not suggest that it can equate to a U.S. Master's degree.

ORDER: The appeal is dismissed.